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To: All Members

Dear Brother/Sister

EMPLOYERS EMPLOYMENT APPEAL TRIBUNAL AND IMMEDIATE DETRIMENT.

The employers' appeal to the Employment Appeal Tribunal was heard 16 December 2020. It concerns the question whether the Fire and Rescue Authorities (FRAs) are jointly liable with the government for the unlawful discrimination which the Court of Appeal has already found to exist, and which the government now admits.

The Judge has stated that a decision will be handed down in either the second or third week in January 2021.

Members will recall the judgment the union obtained in the Employment Tribunal in *Sargeant and Others v London Fire and Emergency Planning Authority and Others*. The judgement said that both the Government and the FRAs were responsible for the age discrimination which the Court of Appeal found to exist.

The FRAs appeal 16 December 2020 was argued on the basis that they were only obeying the regulations and could not be blamed for doing so. The FBU legal team argued that the premise of the FRAs' appeal is wrong because the regulations are automatically amended by the Equality Act 2010, which inserts a regulation to the effect that the scheme will be operated in a non-discriminatory manner, and this implied non-discrimination rule overrides all of the other rules. That means that any regulation requiring discriminatory treatment is automatically deleted.

The FBU position is that the government was responsible for the discrimination within the pension scheme and that they should therefore pick up the bill to remedy that discrimination. The FRAs should now explore the possibility of a legal claim against the government (rather than challenge the decision itself) to ensure that no FRA is left with the cost of administering the remedy.

As mentioned above, the Employment Tribunal has already made a formal declaration that the *Sargeant* claimants are entitled to be treated as if they are still members of the 1992 FPS. That was agreed by the Home Office, and by the FRAs (subject to their appeal).

The FBU is very concerned that the employer's appeal only builds in further delay to what has already been a lengthy process for our members.

The "immediate detriment" cases, of members who have already retired, either because they retired on the grounds of ill-health, or in the case of FPS members, because they have reached the point where they have 25 years' pensionable service and have reached the age of 50 are (despite the declaration and subsequent guidance) in most FRAs are still not getting their full legacy scheme benefits.

The FRAs and the Home Office admit that members who were transferred out of the 1992 FPS should be getting 1992 FPS benefits; they say it is too administratively complex and time-consuming to deal with them on a case-by-case basis. They state that if the FBU can highlight cases which are going through the retirement process right now they will try to pull out their file. Otherwise, these members will all have to wait until the schemes are reformed again in 2022 or 2023.

The FBU is very clear that this is simply not acceptable, the FBU's legal team is now instructed by the union and are actively preparing further legal proceedings to force the FRAs to allow members to retire under the terms of the FPS 92 if that is what they want to do.

Yours fraternally,

A handwritten signature in black ink, appearing to read 'Mark Rowe', with a stylized, cursive script.

MARK ROWE
National Officer

MR/jr